

Appl. No. 10/719,263
Atty. Docket No. 9435
Amtd. dated 19 December 2006
Reply to Office Action of 29 September 2006
Customer No. 27752

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REMARKS

Claim Status

Claims 1-4 and 7-12 are pending in the present application. No additional claims fee is believed to be due.

Rejection Under 35 U.S.C. §103(a) Over Schoelling (U.S. 2001/0014348) as evidenced by Hirschman (U.S. 4,175,561) in view of Schoelling (U.S. 2002/0151859)

Claims 1-4 and 7-12 have been rejected under 35 USC §103(a) as being unpatentable over Schoelling '348 as evidenced by Hirschman in view of Schoelling '859.

With respect to claims 1-4 and 7-12 and obviousness: Applicants respectfully traverse the rejection of claims 1-4 and 7-12 under 35 U.S.C. §103(a) as the cited references fail to disclose or suggest a tampon for feminine hygiene comprising an outer surface, wherein said outer surface of said tampon comprises a plurality of recessed portions, each of said recessed portions comprising a length dimension and a width dimension, wherein said width dimension varies intermittently as measured along said length dimension, and wherein all of said outer surface of said tampon is liquid-absorbing.

As stated in the MPEP §2143, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Further, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

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1. No suggestion or motivation to modify Fries et al. in light of reference teachings

Schoelling '348 discloses a tampon that is substantially enclosed within a cover of fluid impervious plastic material in the form of a resilient three-dimensional web having a multiplicity of perforations. (Page 1, Paragraph 0014) The only absorption of fluid by the tampon is at the holes in the fluid impervious plastic material, not the outer covering of fluid impervious plastic material itself.

Page 3, Paragraph 1 of the Office Action alleges that Paragraph 0020 on Page 2 of Schoelling '348 teaches a general principle that recessed portions in the form of recessed perforations, holes, and apertures increase the surface area of the outer surface of a tampon. However, Page 2, Paragraph 0020 of Schoelling '348 is not teaching that recessed portions increase the outer surface area of a tampon, rather the paragraph is stating that as shown in FIG. 2 each of the holes has a conical shape being radially inwardly extended to the outer surface of the absorbent body. Hereby, the absorption velocity can be increased due to the fact that the effective absorbing surface area of the outer surface of the absorbent body is increased. Therefore, Paragraph 20 is stating that absorption velocity is increased not because of recesses in the outer surface of the tampon, but due to the wide section of the conical hole being in contact with the outer surface of the tampon, as shown in FIG. 2. The cover as taught in Schoelling '348 does not increase the outer surface area of the tampon, the cover restricts the outer surface area by being constructed from a fluid impervious plastic material. Schoelling '348 does not teach one skilled in the art about increasing the outer surface area of a tampon, rather Schoelling '348 discloses a method of controlling tampon absorbency and expandability by restricting fluid intake at the tampon outer surface.

Schoelling '859 discloses a tampon wherein the outer surface of the tampon is at least partially provided with spirally shaped, pressed longitudinal grooves, which define spirally shaped longitudinal ribs. Schoelling '859 further discloses that the arrangement of the spiral longitudinal ribs and the spiral guide ducts or longitudinal grooves brings about an enlargement of the surface of the tampon. (Page 3, Paragraph 0039)

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It is Applicant's position that there is no motivation to combine the Schoelling references when Schoelling '348 is trying control absorbency and expandability of a tampon by restricting the tampons ability to absorb fluid at its outer surface through the use of a fluid impervious plastic cover, and Schoelling '859 is trying to enlarge the tampon's outer surface area. The references are teaching away from each other. One of ordinary skill in the art would not be motivated to increase the outer surface area of a tampon based on the disclosure of Schoelling '348, and likewise Schoelling '859 would not motivate one skilled in the art to reduce the outer surface area of a tampon to control the absorbency and expandability of a tampon.

Accordingly, Applicant respectfully submits that there is no motivation to modify Schoelling '348 in view of Schoelling '859.

2. Does not teach or suggest all of the claim limitations

The tampon of the present invention is directed to a tampon, which comprises an outer surface, wherein said outer surface of said tampon comprises a plurality of recessed portions, each of said recessed portions comprising a length dimension and a width dimension, wherein said width dimension varies intermittently as measured along said length dimension, and wherein all of said outer surface of said tampon is liquid-absorbing. These elements are not found individually in the references or in combination.

Accordingly, the Applicant respectfully submits that claims 1-4 and 7-12 are non-obvious in view of Schoelling '348 and Schoelling '859.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U.S.C. §103. Early and favorable action in the case is respectfully requested.

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This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of claims 1-4 and 7-12 is respectfully requested.

Respectfully submitted,

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